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In the Supreme Court of the United States

October Term, 1962

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 622

JONIE GARDNER LEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals (Pet. App. 3) is reported at 308 F. 2d 715.

JURISDICTION

The judgment of the court of appeals was entered on September 29, 1962. On October 23, 1962, Mr. Chief Justice Warren extended the time for filing a petition for a writ of certiorari to and including

November 28, 1962 (Pet. App. 2). The petition for a writ of certiorari was filed on November 26, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court erred in denying petitioner's motion to suppress evidence obtained from petitioner's residence incident to his arrest under a warrant.

STATEMENT

Petitioner was indicted in the United States District Court for the Eastern District of North Carolina for conspiring with others to violate the internal revenue laws relating to liquor and a warrant was issued for his arrest. On February 16, 1961, three officers went to petitioner's home to execute the warrant. Two of them, Vassar and Richardson, went to the front door, while the third, Blake, was stationed at the back door to guard against the possibility of escape (R. 2, 14). Petitioner answered the front door and, after the officers had identified themselves and stated their purpose, invited them into the living room (R. 3). There Richardson read the warrant to petitioner, while Vassar, during or immediately after such reading, went to the rear of the house to admit Blake. On the way he observed in plain view in the kitchen three 60-pound bales of sugar and, in another room, two cases of half gallon fruit jars and an additional 20 pounds of sugar (R. 3). On the

way back to the living room after admitting Blake, Vassar tried the door adjacent to the sugar and found it locked (R. 4). In the search of petitioner's person, some keys were found, with one of which the officers unlocked the door near the sugar and discovered a 200 gallon still, not yet completely assembled, one gallon of nontaxpaid whiskey, and associated equipment (R. 4).

As a result of this discovery, a new indictment was returned on April 3, 1961, charging petitioner with unlawful possession of the whiskey, still, and sugar. Petitioner was arraigned on this indictment on February 12, 1962, and the case went to trial on March 8, 1962. On March 7, petitioner filed in the district court a motion to suppress evidence which, according to its date, had been prepared some time before. After a trial before the court (jury having been waived) at which the evidence was developed, the district court denied the motion to suppress on the grounds (a) that it was without merit, and (b) that it was not timely filed under Rule 41 (e) and under a local district court rule which required the filing of motions before arraignment. Petitioner was convicted and sentenced to imprisonment for two and a half years. The court of appeals affirmed the conviction, holding that the motion to suppress had properly been denied on the merits, and that it was therefore unnecessary to decide its timeliness.

ARGUMENT

The ruling of the court below, affirming on the merits the denial of petitioner's motion to suppress, was proper on the facts of this case and presents no issue warranting further review. The action of the officers was reasonable at every step of the way.

It is questionable whether the act of the arresting officers in passing through petitioner's house to admit the officer stationed at the rear door constituted a "search." * Even if it should be so regarded, however, petitioner was already in custody.

As an incident to petitioner's arrest, the officers were entitled to search his person and the premises under his control for the fruits of the crime with which he was charged. *Weeks* v. *United States*, 232 U.S. 383; *Agnello* v. *United States*, 269 U.S. 20. The warrant for petitioner's arrest alleged liquor violations. The location of the locked room adjacent to the sugar and jars gave the officers every reason to believe that if the fruits of any earlier crimes were in the house they would be in that room. It was therefore proper for them to search the room. There was no general rummaging through petitioner's personal papers or personal effects. Indeed, the

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* It may be added that the officers, of course, were not required to ignore what was plainly before them. *Marron* v. *United States*, 275 U.S. 192; *United States* v. *Lee*, 274 U.S. 559.

search was less intensive than those upheld in *United States* v. *Rabinowitz*, 339 U.S. 56 and *Harris* v. *United States*, 331 U.S. 145.

Since the entry upon the premises was warranted, and the ensuing search valid, the officers had the right to seize property the possession of which was illegal, even though they were not aware that such property was on the premises when the search was initiated. *Harris* v. *United States*, *supra*.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
EUGENE P. MILLER,
Attorneys.

JANUARY 1963

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